



## U.S. Department of Justice

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### **NOTICE OF REQUIREMENTS FOR CHAPTER 11 DEBTORS IN POSSESSION ("NOTICE OF REQUIREMENTS")**

The United States Trustee has extensive monitoring and oversight responsibilities with respect to chapter 11 estates pursuant to section 586(a)(3) of Title 28 of the United States Code. In order to fulfill these responsibilities, the United States Trustee has delineated certain duties, responsibilities and reporting requirements for chapter 11 debtors in possession. Some must be performed immediately upon the filing of the petition (where the case is converted to chapter 11, upon entry of the order of conversion or, in the case of an involuntary petition, upon entry of the order for relief), a significant number are required within seven days of the date of filing (the 7-Day Package), others are not required until several weeks after the petition is filed, and still others are required on an ongoing basis throughout the pendency of the bankruptcy. All requirements must be met in a complete and timely fashion unless waived in writing by the attorney or analyst assigned to the case.

The documents discussed in this Notice must be submitted to the United States Trustee, not the bankruptcy court.

#### **DAY-ONE REQUIREMENTS**

##### **1. Close Out All Existing Books and Records**

All books and records of the chapter 11 debtor must be closed out as of the date the petition is filed.

##### **2. Open a New Set of Books and Records**

These are the debtor in possession books and records, which must be maintained throughout the bankruptcy.

##### **3. Close All Existing Bank Accounts**

All accounts that the debtor owns, has access to, or over which the debtor exercises possession, custody or control must be closed immediately upon filing.

#### **4. Open New General, Payroll and Tax Bank Accounts**

In business cases, a minimum of three new debtor in possession bank accounts (general, payroll and tax) must be opened in a bank that appears on the list of approved depositories, which can be obtained from the United States Trustee. In some limited cases, such as those involving individual non-business debtors, the debtor may obtain written permission from the attorney or analyst assigned to the case to maintain fewer debtor in possession accounts. All estate funds must be kept in these accounts. The new bank signature cards and printed checks must clearly indicate that this is a "debtor in possession" account, and the chapter 11 case number must also appear on the face of the checks. If the debtor is required to segregate cash collateral, additional separate accounts must be established and maintained.

#### **5. Obtain Insurance Coverage**

The debtor must maintain appropriate insurance coverage for all estate property, including raw land. Listed below are the types of insurance coverage that are normally required for most bankruptcy estates. If the debtor does not have the required insurance coverage at the time of filing, it must be obtained immediately.

*General Comprehensive Public Liability Insurance*

*Fire and Theft Insurance*

*Worker's Compensation Insurance*

*Vehicle Insurance*

*Product Liability Insurance*

*Any other insurance coverage customary in debtor's business*

The debtor must also immediately notify its insurance carrier(s) and/or agent(s) in writing, with a copy to the United States Trustee, that the United States Trustee must be notified of any cancellation of any insurance.

#### **THE 7-DAY PACKAGE**

Within seven days of the date the petition is filed, the case is converted, or an order for relief is entered, the debtor must submit a package of required documents (the 7-Day Package) to the United States Trustee consisting of the following.

##### **1. 7-Day Package Cover Sheet (Form USTLA-2)**

The 7-Day Package Cover Sheet (Cover Sheet) (Form USTLA-2) contains a list of the documents required to be included in the 7-Day Package. The debtor must check the box on the form corresponding to each document that is attached. If any document is not attached, an explanation must be provided. Inadequate explanations may result in the filing of a motion to dismiss or convert the case.

If any required document is not included in the 7-Day Package but is later submitted, the submission must include an additional Cover Sheet indicating which document is being submitted at that time.

## **2. Real Property Questionnaire (Form USTLA-5)**

The debtor must submit a separate Real Property Questionnaire (Form USTLA-5) for each parcel of real property the debtor leases, owns, has an interest in or is in the process of purchasing.

## **3. Proof of Closed/Opened Bank Accounts**

The debtor must provide the United States Trustee with a copy of a bank statement for each pre-petition bank account evidencing that the account has been closed. Additionally, the debtor is to provide a declaration stating that all pre-petition accounts have been closed, including the location of the bank, the account number, the date the account was closed, and the amount in the account at closing. The debtor must also provide copies of all new bank signature cards together with evidence of the amounts transferred to the new accounts.

## **4. Proof of Insurance Coverage**

The debtor must submit proof of current insurance coverage in the form of a statement, signed under penalty of perjury, that all insurance coverage required by the Notice of Requirements is in full force and effect. The declaration page of each policy showing the type and extent of coverage, expiration date and designating the debtor in possession as the loss payee/beneficiary, must be attached to the sworn statement. The debtor must provide updated information automatically upon the expiration date set forth in each insurance policy.

## **5. Proof of Required Certificates and Licenses**

The debtor must submit proof that the debtor holds all certificates and licenses required by federal, state and local law for the lawful operation of the debtor's business. The following is a list of licenses and certificates that are typically required:

*Certificate that a corporation is active and in good standing in its state of incorporation.*

*Certificate of Limited Partnership.*

*Fictitious Name ("DBA") Statement filed with the county recorder*

*Liquor and Tobacco Licenses.*

## **6. List of Insiders**

The debtor must submit a list of all insiders as defined in 11 U.S.C. §101(31).

## **7. Pre-petition Financial Statements**

The debtor must submit copies of its most recent financial statements (audited and unaudited), including but not limited to a balance sheet, income (profit and loss) statement and a cash flow statement. The cash flow statement must contain a detailed statement of all receipts and disbursements.

## **8. Projected Cash Flow Statement**

The debtor must submit a projected cash flow statement, covering the first sixty days of operation under chapter 11. This statement must contain a detailed income and expense statement.

## **9. Federal Income Tax Returns, Federal and State Payroll Tax Returns and State Sales Tax Returns**

The debtor must submit copies of all federal income tax returns filed for the three fiscal years immediately preceding the filing of the chapter 11 petition. The debtor must also submit copies of the most recently filed federal and state payroll and state sales tax returns, including all schedules and attachments. All taxes must be timely paid and all tax returns must be timely filed during the pendency of the chapter 11 proceeding. Copies of all future tax returns must be submitted to the United States Trustee within seven days of filing with the taxing authority. Copies of tax returns will be sealed and kept in a confidential file that will not be made available for public inspection. To help ensure confidential treatment, tax returns should not be attached to other documents.

## **10. Trust Agreements**

The debtor must submit copies of any trust agreements to which the debtor is a party or under which the debtor holds, has possession of, or operates any personal or real property or business as a trustee or otherwise.

## **11. Proof of Recordation of Chapter 11 Petition**

The debtor is required to record a copy of the chapter 11 petition (exhibits may be omitted) with the recorder of each county or other applicable political subdivision for each parcel of real property owned or leased by the debtor or in which the debtor has an interest, and provide proof of recordation to the United States Trustee.

## **12. Physical Inventory of Goods, Machinery and Equipment**

The debtor must conduct a physical inventory, including an itemized cost value, of all goods, machinery and equipment on hand as of the date of the petition, and a copy of the inventory must be submitted to the United States Trustee. Although this requirement is included in the 7-day package, often the inventory cannot be completed immediately. If this is the case, the expected date for completing the inventory -- normally not more than 30 days after filing the petition -- should be noted on the Cover Sheet.

## **13. Employee Benefit Plan Questionnaire (Form USTLA-8)**

The debtor must submit a Employee Benefit Plan Questionnaire (Form USTLA-8) which identifies whether or not it is a public corporation, and whether it sponsors a group health, dental and/or a pension plan.

## **WITHIN 15 DAYS OF FILING THE PETITION**

### **Extension of Time to File Schedules and/or Statement of Affairs**

The debtor's Schedules and Statements of Affairs are required by the Code to be filed *with the bankruptcy court* within 15 days of the filing of the petition. If unable to file in a timely fashion, the debtor must obtain a court order granting an extension of time to file. The motion and proposed order *is not filed directly with the court*, but rather must be submitted to the United States Trustee for review and comment, after which the United States Trustee will file the motion and proposed order with the court.

The motion and proposed order must comply with the usual format requirements for a motion

filed with the court (i.e., captioned and blue-backed) and must also include a separate page for the comments of the United States Trustee. This comment page should be placed at the end of the motion if the proposed order is a separate document, or just before a proposed order included in the same document.

## **ADDITIONAL AND ONGOING REQUIREMENTS**

### **1. Insider Compensation**

Before any insiders (defined in 11 U.S.C. § 101(31)), including the owners, partners, officers, directors or shareholders of the debtor and relatives of insiders, may receive compensation from a chapter 11 estate, the debtor must submit a Notice of Setting/Increasing Insider Compensation (Form USTLA-12). The Notice of Setting/Increasing Insider Compensation must be served on the creditors' committee or the twenty largest unsecured creditors if no committee has been appointed, as well as on any secured creditors that claim an interest in cash collateral, and proof of service must be submitted to the United States Trustee. *No compensation may be paid out to any insiders until 15 days after service of such notice, although such compensation may be accrued during this period.*

If, at any later time, the debtor proposes to increase the compensation of any insider, the debtor must submit and serve a new Notice of Setting/Increasing Insider Compensation as above. *No increase in insider compensation may be paid until 30 days after service of such notice.* In either case, if an objection is filed, it is advisable for the debtor to refrain from paying out the disputed compensation or increase until the objection has been resolved by the court.

### **2. Financial Reports**

The debtor must regularly submit financial reports to the United States Trustee. These reports are described in the "Notice of Financial Reporting Requirements," included in the "Chapter 11 Notices and Guides."

### **3. Quarterly Fees**

Chapter 11 Debtors are required to pay a quarterly fee to the United States Trustee every calendar quarter (including any fraction thereof), based on disbursements made from the date the petition is filed until the date of entry of an order for a final decree or dismissing or converting the case. Cases that have been administratively consolidated must still pay a separate fee for each case; however, cases that have been substantively consolidated need pay only one quarterly fee, beginning the first full quarter after consolidation. Operation during even one day of a quarter requires payment of the fee applicable for that quarter.

Fees are due no later than one month following the quarterly reporting period. In order to be confirmed, a chapter 11 plan of reorganization must provide for payment of outstanding quarterly fees on or before the effective date of the plan. Payment of quarterly fees is due immediately upon entry of an order dismissing the case.

The amount of the quarterly fee varies, depending upon the dollar amount of disbursements made during the calendar quarter, with the minimum fee required regardless of the amount disbursed. The current Quarterly Fee Schedule, including the address to which checks should be mailed, is attached.

Quarterly fees may be paid by check payable to the United States Trustee. However, if any check

is returned marked "insufficient funds," all future quarterly fee payments must be made by cashier's check, certified funds or money order. Failure to pay the quarterly fee is cause for conversion or dismissal of the chapter 11 case.

#### **4. Quarterly Status Reports**

The debtor must submit to the United States Trustee and serve on the creditors' committee or the twenty largest unsecured creditors if no committee has been appointed, a quarterly status report of the progress of the case detailing any significant activity, including any litigation commenced either by or against the debtor. The report should include information relevant to progress toward filing a plan of reorganization and estimated date that a plan and disclosure statement will be filed.

#### **5. Maintain Accounts in Approved Depository**

It is the debtor's responsibility to maintain all cash of the estate in debtor in possession bank accounts in an approved depository throughout the pendency of the case. If a depository is acquired by an institution that is not an approved depository or if an institution loses its approved status, the debtor must immediately close accounts at such an institution and re-open the accounts in an approved depository.

#### **6. Preparation and Filing of Income Tax Returns**

Income tax returns, whether personal or business, state or federal, must be prepared and filed throughout the pendency of the bankruptcy.

#### **7. On-site Audits and Inspections**

The United States Trustee may conduct on-site audits and inspections, which may be unannounced, of the debtor's books, records and facilities to verify the information provided and to ensure that estate assets are appropriately safeguarded. Under 18 U.S.C. § 152, concealment of books, records or assets of a bankruptcy estate is a felony, punishable by a maximum sentence of 5 years imprisonment and a fine of \$5,000.

#### **8. Applications to Employ Professionals**

Applications for employment of any professionals who will render services to the debtor in possession, whether or not the fees are to be paid by the estate or by a third party, must be noticed and may either be submitted to the United States Trustee (in which case no hearing is required unless requested by the United States Trustee) or made by noticed hearing and filed directly with the court. Counsel should consult the "Guide to Applications for Employment of Professionals and Treatment of Retainers," for specific procedural and substantive guidance on employment of professionals. The employment application should be submitted before the professional begins to render any services to the debtor in possession or the chapter 11 estate. Where this is not possible, the application should be submitted within 15 days of the commencement of services.

#### **9. Use, Sale or Lease of Estate Property**

Where the court has authorized the use, sale or lease of property of the estate outside the ordinary course of business of the debtor, if an escrow is contemplated, a copy of the escrow instructions must be submitted to the United States Trustee. Within ten days after the close of escrow or completion

of the sale, a certified copy of the escrow closing statement or, where no escrow was utilized, a sworn declaration showing the distribution of the proceeds of any sale of estate property must be submitted to the United States Trustee, and this requirement should be included in the order approving the sale.

#### **10. Notice and Service on United States Trustee**

Copies of all pleadings filed in a chapter 11 case, including those filed in adversary proceedings and contested matters, must be served on the United States Trustee, whether or not the United States Trustee is a party to the proceeding.

#### **11. Notice of Address Change**

The debtor must notify the United States Trustee and the bankruptcy court of any change of address or telephone number within seven days after the change occurs.

#### **12. Stipulations for Appointment of Trustee or Examiner**

Stipulations for the appointment of a chapter 11 trustee or examiner must be submitted to the United States Trustee for review and approval prior to filing with the court.

#### **13. Debtor's Major Issues and Timetable Report**

The debtor should set forth a brief description of:

- (a) the structure of the corporation, partnership or business; identification of its officers and shareholders (if a corporation), principals and/or owners and managers, if applicable, with full names, addresses and telephone numbers (if a partnership or sole proprietorship);
- (b) the nature of the debtor's business;
- (c) the major events or circumstances that led to the filing;
- (d) the major issues, problems and/or disputes to be resolved, and with whom, listed in order of complexity from most to least difficult;
- (e) a proposed timetable to resolve each of the problems described in (d) above, setting out on a single timetable the date of beginning each task, the date of completion of each step in the task resolution, and expected date of sufficient resolution of each task; and
- (f) the expected date for filing the disclosure statement and plan.